

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

Nutrient Solutions, Inc.

Franklin County, Iowa

**ADMINISTRATIVE
CONSENT ORDER
NO. 2011-AFO-04**

**TO: Chad Arnold, President
Nutrient Solutions, Inc.
2059 265th Street
Webster City, IA 50595**

I. SUMMARY

This administrative consent order (order) is entered into between Nutrient Solutions, Inc. (Nutrient Solutions) and the Iowa Department of Natural Resources (Department). Nutrient Solutions hereby agrees to ensure that all of its manure applicators are properly certified prior to land application of manure and to pay an administrative penalty. In the interest of avoiding litigation, the parties have agreed to the following provision.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Eric Wiklund, Environmental Specialist
IDNR Field Office #2
2300 15th St SW
Mason City, IA 50401
641/424-4073

Relating to legal requirements:

Carrie Schoenebaum, Attorney at Law
Iowa Department of Natural Resources
Wallace State Office Bldg. 502 E. 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/281-0824

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

The parties hereby agree that this order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure

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compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I, or Iowa Code Chapter 459 and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

The parties hereby agree to the following statement of facts:

1. On September 30, 2010, Eric Wiklund, an Environmental Specialist Senior with the Department, responded to a manure release which occurred as a result of an overturned manure tanker owned by Nutrient Solutions. Sam Powell, an employee of Nutrient Solutions, had land applied manure and at approximately 6:00 pm he lost control of the manure tanker he was driving on Killdeer Avenue in Franklin County, Iowa. The manure tanker flipped upside down and discharged the entire contents of the tank, 8,000 gallons of manure, into a wetland owned by the Franklin County Conservation Board. The manure was discharged to an area of cattails that was part of an old oxbow lake. An earthen dam was placed in the road ditch and in the oxbow lake to prevent manure from reaching Spring Creek. No manure reached the creek. Over the next few days Nutrient Solutions took all the necessary steps to clean up the manure release.

2. Following the on site investigation, Mr. Wiklund discovered that Mr. Powell was not a certified commercial manure applicator as required by the Department's rules. Further, in mid October, Nutrient Solutions sent the Department a list of its manure applicators from 2009 and 2010. In 2009, it employed 9 applicators; none of whom were certified. In 2010 it employed 6 applicators; none of whom were certified. Only Chad Arnold and Jake Hansen, the owners of the company, were certified.

3. In October 2010, the fees for Nutrient Solutions' 2010 employees was paid.

IV. CONCLUSIONS OF LAW

The parties hereby agree to the following conclusions of law:

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. 567 IAC 65.19(1) states a commercial manure service, a commercial manure service representative or a confinement site manure applicator shall not apply dry or liquid manure to land, unless the person is certified. The above-mentioned facts indicate

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violations of this provision.

V. ORDER

THEREFORE, the Department orders and Nutrient Solutions agrees to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

1. Nutrient Solutions shall ensure that all of its employees are properly certified to haul, apply or otherwise handle manure; and
2. In 2009, Nutrient Solutions employed 9 applicators; the certification fee is \$100.00 per applicator. Therefore, within 30 days of the date the Director signs this order, Nutrient Solutions shall submit \$900.00 to the Department for these fees.
3. Nutrient Solutions shall pay a penalty of \$6,000.00 within 30 days of the date the Director of the Department signs this order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.
2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this administrative consent order is \$6,000.00. The administrative penalty is determined in accordance with the following:

Economic Benefit – Nutrient Solutions operated in noncompliance for all of 2009 and the majority of 2010 (January-October). It is estimated that Nutrient Solutions land applied manure from approximately 35-40 sites each year. Therefore, it is likely that during both years, a substantial profit was earned. None of Nutrient Solutions applicants, other than the two owners, were certified, therefore, none of the employees should have been land applying manure. The Department could justify collection of all profit earned by the company while operating in noncompliance. However, the Department has decided the most efficient means of handling these violations is administratively and in light of the maximum penalty authorized \$1,500.00 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of

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violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The violations cited in this order threaten the integrity of the regulatory program because compliance with the regulations is required of all persons in this state. Land application of manure without proper certification increases the risk of a manure discharge and damage to the environment. Based on the above considerations, \$1,500.00 is assessed for the certification violations which occurred in 2009 and \$1,000.00 is assessed for those which occurred in 2010, for a total of \$2,500.00 assessed for this factor.


Culpability – All manure applicators have a duty to remain knowledgeable of the Department's requirements and to be alert to the probability that their conduct is subject to the Department's rules. The owners of Nutrient Solutions were well aware of the certification requirements; in fact, they were properly certified. Nevertheless, they failed to ensure that their employees were certified. Therefore, \$2,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175 and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent of Nutrient Solutions. By signature to this order, all rights to appeal this order are waived.

VIII. NONCOMPLIANCE

Compliance with section V of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order. Failure to comply with this order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



Chad Arnold

Dated this 11th day of
Feb., 2011.



Roger Lande, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 15th day of
February, 2011.

Nutrient Solutions, Field Office 2, Carrie Schoenebaum; Eric Wiklund, I.C. 1, & I.C. 6 a.